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IN THE
THE UNITED STATES SUPREME COURT

OCTOBER 1997 TERM

ROBIN MILLET, widow of Lionel Millet and on behalf of her minor children Lionel N. Millet Gennie Millet and Brady Millet, Et Al

Petitioners

VERSUS

JACK H. WOODWARD, ALTA WOODWARD, ET AL.
PLAINTIFFS;
JOHN D. VERSEN, RAMON HUERTA, SIMON GARCIA, ET AL.
PLAINTIFFS;
AND
NOR-AM CHEMICAL COMPANY, ALVIN TORK
DEFENDATS

Respondents

FEDERAL CLASS ACTION
PRODUCTS LIABILITY, TOXIC EXPOSURE

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

[illegible]

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BEST AVAILABLE COPY

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QUESTIONS PRESENTED FOR REVIEW

1. Was the Millet Group of Louisiana Citizens' appeal No. 97-6044 to the Eleventh Circuit frivolous.

2. Was the Millet Group's counsel actions in the 11th Circuit sanctionable in light of the prevailing authorities.

3. Was there a violation of counsel's right to due process, and those recognized by FRAP 38 for the court's failure to provide counsel with an opportunity to be heard on the issues for sanctions and motion to dismiss the appeal.

4. Did the Eleventh Circuit court of Appeal erred in not taking notice of this honorable Court's ruling in Amchem v. Windsor (96-270 June 25, 1997) affirming the Third Circuit ruling in Georgien v. Amchem Products, Inc., 83 F.3d 610, 64, (May 10, 1996).

5. Were the rights of the Woodward class identical to those of the Georgien class, wherefore the Eleventh Circuit declaration that the Millet Appeal was frivolous constitute a split between the circuits.

6. Were the Millet Group members, members of the Woodward class having the right to object to the proposed settlement and the granting of attorneys fees.

7. Was there a valid waiver of rights and settlement in the Woodward v. Nor-Am case, that will make the Millet appeal of no merits.

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APPENDICES :

A. LETTER JULY 16 FROM THE CLERK OF THE 11TH CIRCUIT (NOTICE OF NO ACTION).
B. JULY 16, 1997 JUDGMENT BY THE 11TH CIRCUIT (APPEAL FRIVOLOUS AND SANCTIONS).
C. JULY 16, 1997 ORDER FROM THE 11TH CIRCUIT (DENYING SECOND MOTIONS FOR SANCTIONS)
D. APRIL 30, 1997 ORDER FROM THE 11TH CIRCUIT (DISMISSING APPEAL AND IMPOSING SANCTIONS, CONSIDERING ALL OTHER PENDING MOTIONS MOOT)
E. DECEMBER 4, 1997 ORDER FROM THE SOUTHERN DISTRICT OF ALABAMA ADOPTING THE MAGISTRATE'S RULING OF OCTOBER 11, 1996.
F. REPORT AND RECOMMENDATION AUTHORED BY MAGISTRATE JUDGE WILLIAM CASSADY OF THE SOUTHERN DISTRICT OF ALABAMA

LIST OF PARTIES

PETITIONERS ARE:

The following individuals, , Robin Millet (widow of Lionel Millet and on behalf of her minor children, Lionel N. Millet, Gennie Millet, and Brandy Millet), Bessie Jackson (on her own capacity and on behalf of her minor children), Rosa Hall (widow of Severia Hall and on behalf of her minor children), Shelby Stevens and his spouse Mary Ann Stephens, Frank Williams, Ella Williams, Hattie Davis, Louis Davis, Donald Hawkins, Robert Johnson, Charles Pierson, Andrea Redditt, Jerry Scott, Delmar Stewart, Junius Thomas, Glenn Washington, Dorothy Washington, Shermar Washington, Faye Williams, James Young, Annette Baker, Raymond Brown, Kenneth Dominque, Mercedes Dominque, Kelvin Duncan, James Grallegro, Alex Germany, Darryl Green, Lawrence Lott, Patricia Lott, AlbertHA Matthews, Patricia Riley, Lionel Saylor, Al Weams, Mose Williams, Rusel Wilson, Elvin York, Charles Williams, Cheryl Williams, Calvin Dominque, Aaron Williams, Allen Weatherford, Willie Roddy, Andrew Fornest, Ronnie Little, Annette Baker, Ethel Valentine, Randy Pero, Quindell Washington, Emmanuel Howard, Constance Howard, Howard Bernice Johnson, Otis Jones, Marie Jofferion, Eddie Holland, Darryl Barber, Leroy Bartley, Hurley Henson, Johnson Leatha Darville, Rebecca Thompson, Leslie Thompson, Sedric Crawford, Phyllis Marcelle, Earnest Larks, Micheal Stephens, Norman Gordon, Gerdaline Sharper, Wayne Robinson , Galdys Martin, Donald Thomas, Lenis Dukes, Alvin Grant, Eugene Mills, Raymond Brown; and Albert Simpson herein after called the (Millet Group).

JURISDICTION OF THE COURT

1. Jurisdiction of this honorable court is being invoked pursuant to:

Rule 10. Considerations Governing Review on Writ of Certiorari *(in pertinent part states)*

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (*emphasis added*)

2. Statement of the basis of jurisdiction:

On July 16, 1997 the Eleventh Circuit Court of Appeal declared an appeal notice filed by the Millet Group to constitute a "Frivolous Appeal". The court without permitting a hearing, further ordered undersigned to pay monetary sanctions in the amount of $2,000.00 to class counsel. The court also considered a petition for a rehearing to be a motion for reconsideration denying the relief sought. The Eleventh Circuit (by its clerk) made a ruling that a timely motion to leave to amend petition for a rehearing, which motion was filed prior to any final conclusion of the underlying matter, will not be acted upon. Said motion was predicated on this honorable court's decision in Amchem v. Windsor (US S. Ct. 96-270). [a copy of judgment attached herein with]

3. Other :

The matter of Woodward v. Nor-Am chemical company (CA 94-0780-CB-C) is of such imperative public importance that would warrant this honorable courts review of all actions taken therein.

4. The Statutory provisions:

28 § U.S.C. 1912 and Rule 38 of the Federal Rules of Appellate Procedure.

Rule 23 of the Federal Rules of Civil Procedure.

Due Process Clause as impeded in the United States Constitution.

PETITION

NOW INTO COURT, Through undersigned counsel comes the MILLET GROUP, which group consists of a number of citizens of the State of Louisiana, who will have certain rights affected by the proposed class settlement in the above captioned matter. This group further represents a number of citizens of the United States whose lives were affected by virtue of their exposure to a severely incapacitating chemical substance (chlordimeform).

1. Petitioners respectfully request that this honorable court review the actions of the 11th Circuit Court of Appeals in declaring their notice of appeal to be a frivolous appeal. This Group of Louisiana Citizens, were never provided any opportunity to submit their appeal brief and their argument in support of their appeal. The court's declaration of frivolity of an appeal on basis of the filing of a notice of appeal was improper.

2. Petitioners, on basis of the recent decision rendered by the United States supreme Court in the matter entitled Amchem v. Windsor No. 96-270 decided on June 25, 1997, moves this honorable Court to overturn the 11th circuit decision declaring their appeal to be non-frivolous and to lift any sanctions imposed on their counsel for legal reasons will be more fully set in their brief.

3. It is also the contention of under signed counsel that his constitutional right to due process has been violated by the 11th Circuit in that he was denied an opportunity to be heard on the issues raised in the motions for sanctions filed against him as it will be detailed in the brief in support of this petition.

4. Rule 38 FRAP provide the requirement for imposition of sanctions, as being

   A. Notice, the filing of the motion for sanctions shall serve as sufficient notice of probability of being sanctioned. See advisory committee notes (1994).

   B. An opportunity to be heard and to show cause why an attorney should not be sanctioned. See advisory committee notes (1994). See also the US Supreme Court's opinion in *Roadway Express, Inc. v. Piper, 447 U.S. 752,767 (1980).*

   the motion for sanctions was defective, class counsel filed a memorandum and then five days latter filed a motion seeking sanctions

5. THE 11TH CIRCUIT COURT OF APPEAL OVERLOOKED THE FACT THAT: GEORGIAN V. AMCHEM PRODUCTS, INC was being reviewed by the supreme court under the title of AMCHEM PRODUCTS, INC., et al., Petitioners, v. George WINDSOR, et al., Respondents. No. 96-270. The case encompass serious issues definitely affect the status of Woodward v. Nor-Am. And that, petitioners raised similar issues to those raised in *Georgine v. Amchem,*[1] *May 10, 1996 decision.*

6. THE MILLET GROUP WERE GIVEN NO OPPORTUNITY TO FILE THEIR APPEAL BRIEF [2].

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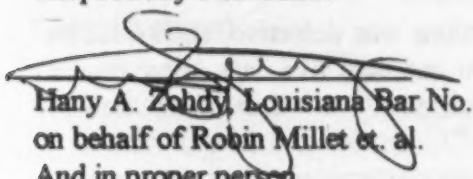
[1] [Georgine v. Amchem Products, Inc., 83 F.3d 610, 64, (May 10, 1996) , rehearing and suggestion for rehearing in banc denied (Jun 27, 1996); Certiorari Granted by US S.Ct. "Amchem Products, Inc. v. Windsor", 117 S.Ct. 379, 136 L.Ed.2d 297, (NO. 96-270)]

[2] Attorney ordered to pay money as sanction for filing frivolous suit or appeal is entitled to due process of law including opportunity for hearing if factual question concerning propriety of sanctions is raised; hearing is not required where conduct sought to be sanctioned consists of making objectively groundless legal arguments in briefs filed before appellate court; text of Federal Rules of Appellate Procedure, Rule 38, and previous decisions applying it, provide all notice attorney could reasonably demand. Hill v

Wherefore, there were no legally groundless argument before the court to determine that the appeal was frivolous. The only thing came before the court was a notice of appeal in which a summary of the issues was presented.

Wherefore, this honorable court should grant this petition for writ of certiorari allowing petitioners to file their brief addressing all the issues.

Respectfully Submitted:



Hany A. Zohdy, Louisiana Bar No. 21409
on behalf of Robin Millet et. al.
And in proper person

Norfolk & W. R. Co. (1987, CA7 Ind) 814 F2d 1192, 124 BNA LRRM 3057, 106 CCH LC ¶ 12248, 7 FR Serv 3d 492. (emphasis added)